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Before the  
Federal Communications Commission  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of:

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Application of BellSouth Corporation,  
BellSouth Telecommunications, Inc.,  
and BellSouth Long Distance, Inc.  
for Authorization to Provide  
InterLATA Services In the State  
of South Carolina

CC Dkt. No. 97-208

To: The Commission

JOINT COMMENTS BY AD HOC COALITION OF TELECOMMUNICATIONS  
MANUFACTURING COMPANIES AND CORPORATE TELECOMMUNICATIONS  
SERVICE MANAGERS CONCERNING FCC'S PUBLIC INTEREST FINDING

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TABLE OF CONTENTS

	<u>Page</u>
SUMMARY .....	iii
INTRODUCTION .....	1
ARGUMENT .....	3
I. Granting BellSouth's Application Will Serve the Public Interest Since It Will Further Each of the Two Objectives that Congress Wants the FCC to Evaluate In Making the Public Interest Determination Under Section 271(d)(3)(C) .....	3
A. Granting the Application Plainly Will Promote the First Congressional Objective -- Stimulation of InterLATA Service Competition .....	5
1. In Making the Public Interest Determination, Congress Intended that the FCC Decide Whether Granting the Application Will Stimulate Competition In the InterLATA Service Market .....	5
2. Granting BellSouth's Application Will Stimulate InterLATA Service Competition in South Carolina .....	7
B. The Second Congressional Objective -- Promoting Competition in Telecommunications Manufacturing -- Likewise Will be Furthered by Granting the Subject Application .....	15
1. Congress Intended that the FCC Determine, In Making a Public Interest Determination, Whether Grant of a Bell Company's InterLATA Service Application Will Stimulate Competition In Telecommunications Manufacturing .....	15
2. Granting BellSouth's Application Will Stimulate Manufacturing Competition .....	17
II. There is No Merit to Legal Theories that Would Expand the FCC's Jurisdiction to Define the Public Interest by Permitting It to Consider Factors Other than the	

Impact of Granting the Application on Competition in  
the InterLATA Service and Manufacturing Markets .....24

III. The FCC's Past Conduct Would Preclude It from  
Requiring BellSouth to Open Its Exchange Market In  
Ways Not Mandated By the Statutory Checklist Even If  
the Agency's Authority to Define the Public Interest  
Gave It Discretionary Power to Do So In the Absence of  
Such Past Conduct .....35

CONCLUSION .....40

#### ATTACHMENTS

Att. No. 1	List of Coalition Participants
Att. No. 2	AT&T Direct Mail Marketing Materials
Att. No. 3	Wall Street Journal Article

## SUMMARY

These comments, by a coalition of telecommunications manufacturing companies and telecommunications managers for heavy corporate users of interLATA telecommunications services, show that approval of BellSouth's application to provide interLATA service in South Carolina is "consistent with the public interest, convenience, and necessity." Under Section 271(d)(3) of the Communications Act, the FCC must approve BellSouth's application if doing so serves the public interest assuming that BellSouth also has complied with both the 14-point checklist and the structural safeguards set forth in the Act. The coalition's comments deal only with the public interest issue; they reach no conclusion on the issue of whether BellSouth has met the checklist and structural safeguard requirements.

In urging the FCC to find that grant of BellSouth's application serves the public interest, the coalition's comments document the following important points:

(1) Approving BellSouth's application serves the public interest because it will stimulate competition in South Carolina's interLATA service market and in the telecommunications equipment manufacturing market; the question of whether a grant will stimulate competition in these markets is the only issue that Congress permits the FCC to consider in deciding whether a grant serves the public interest.

(2) While the FCC claims in dicta in its recent order denying Ameritech's Michigan application that it has

authority in making a public interest determination to consider factors other than the question of whether grant will increase competition in the interLATA service and manufacturing markets, that is not so. The comments discuss each argument made by the FCC in support of expansive authority to define the public interest, and they explain why each argument lacks merit.

(3) Even if the FCC's jurisdiction to define the public interest gave it discretionary power in other circumstances to require that BellSouth open its local exchange market in order to protect interLATA service competition, the agency's past conduct would preclude it lawfully from exercising that authority.

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SERVICE MANAGERS CONCERNING FCC'S PUBLIC INTEREST FINDING**

The coalition filing these comments urges the Commission to find that a grant of BellSouth's application to provide inter-LATA service in South Carolina serves the "public interest, convenience, and necessity" as that term is used in Section 271(d)(3)(C) of the Communications Act. The subject coalition consists of both telecommunications manufacturing companies and the telecommunications managers of companies which are high volume subscribers to telecommunications services. Attachment 1 to the comments names each coalition participant.

**INTRODUCTION**

Section 271(d)(3) of the Act requires that the FCC approve the BellSouth application if each of three circumstances exists.

First, subparagraph A requires that the South Carolina exchange service market be open to competition as measured by Section 271(c). Second, subparagraph B requires that BellSouth show that it will provide interLATA service in South Carolina through an affiliate which is structured in the manner set forth in Section 272. Third, subparagraph C states that BellSouth's provision of interLATA service must be "consistent with the public interest, convenience, and necessity."

These comments focus entirely on the question of whether BellSouth's provision of interLATA service in South Carolina is consistent with the public interest. The comments express no view about whether the other two circumstances necessary to grant the application exist.

The comments show in Part I that granting the application is consistent with the public interest since BellSouth's provision of interLATA service in South Carolina will stimulate competition in both the interLATA service and telecommunications manufacturing markets. The comments show in Part II that the Commission has no authority to base its public interest determination on factors other than the impact of a grant on competition in the interLATA service and manufacturing markets. Finally, the comments show in Part III that the Commission's past conduct would preclude it from basing its public interest deter-

mination on factors other than the impact of a grant on competi-  
tion in these two markets even if the agency had discretionary  
authority to do so in the absence of this past conduct.

#### ARGUMENT

**I. Granting BellSouth's Application Will Serve the Public  
Interest Since It Will Further Each of the Two Objectives  
that Congress Wants the FCC to Evaluate In Making the Pub-  
lic Interest Determination Under Section 271(d)(3)(C)**

While Section 271(d)(3) requires the FCC to determine  
whether it serves the public interest to let BellSouth provide  
interLATA service in South Carolina, the agency's authority to  
define the public interest is narrowly constrained. Courts have  
made clear that a government agency charged with determining  
whether it is in the public interest for a particular party to  
engage in a specific line of business must limit its inquiry to  
the question of whether that party's involvement in that busi-  
ness would further the particular objectives that Congress  
wanted that party's involvement to promote. For example, the  
Supreme Court in 1943 held that "the term 'public interest' is  
not to be interpreted as setting up a standard so indefinite as  
to confer an unlimited power."<sup>1/</sup> Instead, the term must be  
"interpreted by its context" in the specific statute in which it

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<sup>1/</sup> Nat. Broadcasting Co. v. U.S., 319 U.S. 190, 216  
(1943).



is used.<sup>2/</sup> In 1976, the Supreme Court clarified that "use of the words 'public interest' in a regulatory statute is not a broad license to promote the general public welfare. Rather, the words take meaning from the purposes of the regulatory legislation."<sup>3/</sup> Senator Pressler, chairman of the conference committee which wrote Section 271, made plain that the phrase 'public interest' convenience and necessity" in subsection (d)(3)(C) must be construed in accordance with this judicial precedent:

"[C]ritics [of the public interest test in Section 271(d)(3)(C)] assume the FCC's discretion is unrestrained. This is not the case. . . . The Communications Act specifies in some detail the kinds of regulatory tasks authorized or required under the Act. . . . Such delineations of authority and responsibility define the context in which the public interest standard shall apply."<sup>4/</sup>

Requiring the FCC to limit its inquiry in this manner in deciding whether BellSouth's provision of interLATA service in South Carolina serves the public interest makes sense as a matter of policy. As the Eighth Circuit has stated, "the funda-

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<sup>2/</sup> Id.

<sup>3/</sup> See NAACP v. FPC, 425 U.S. 662, 669 (1976).

<sup>4/</sup> 141 Cong. Rec. S7966 (daily ed. June 9, 1995); See also, Louis L. Jaffe, "The Illusion of the Ideal Administration," 86 Har. L. Rev. 1183, 1192 (1954) ("[t]he use of 'public interest' in the statute did not manifest a congressional intent to give the Commission general powers to 'regulate' the industry or to solve . . . problems").

mental principle that governmental agencies are limited to the exercise of power delegated by the Congress would be nullified if an agency . . . were at liberty to expand its jurisdiction . . . by the facile . . . step of rewriting the objectives found in the delegating statute".<sup>5/</sup>

We show below that authorizing BellSouth to provide interLATA service in South Carolina serves the public interest because it will further competition in both the South Carolina interLATA services market and in the telecommunications manufacturing market. We also show that Congress intended the Commission to base its determination of whether grant of an application is in the public interest on whether doing so will increase competition in these two markets.

**A. Granting the Application Plainly Will Promote the First Congressional Objective -- Stimulation of InterLATA Service Competition**

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**1. In Making the Public Interest Determination, Congress Intended that the FCC Decide Whether Granting the Application Will Stimulate Competition In the InterLATA Service Market**

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Congress made clear in passing the 1996 Act that determining whether a Bell company's application to provide interLATA service furthers the public interest requires the FCC to con-

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<sup>5/</sup> Midwest Video Corp. v. FCC, 571 F.2d 1025, 1041-42  
(Cont'd on next page)

sider whether that company's provision of interLATA service will increase competition in that market. For example, the House Commerce Committee noted that the House bill was designed to "open [] all communications services to competition."<sup>6/</sup> Nine members of that committee noted further that the House bill "seeks to breakdown statutory and regulatory barriers that have impeded the development of competition in the long distance [service market]."<sup>7/</sup> The Senate Commerce Committee explained that the Senate bill likewise was designed to open the interLATA service market to additional competition in order to benefit consumers by giving them "a greater choice of services and providers".<sup>8/</sup> Numerous Senators and Congressmen made the same point during floor debate on the House and Senate bills.<sup>9/</sup>

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(Cont'd from previous page)  
(8th Cir. 1978).

<sup>6/</sup> H.R. Rep. No. 204, 104th Cong., 1st Sess. at 48 (emphasis added).

<sup>7/</sup> H.R. Rep. No. 204, 104th Cong., 1st Sess., Additional Views at 202.

<sup>8/</sup> Sen. Rep. No. 23, 104th Cong., 1st Sess. at 5.

<sup>9/</sup> See e.g., 141 Cong. Rec. S7892 (daily ed. June 7, 1995) ("The regional Bell . . . companies are . . . barred from . . . offering long distance service. . . . The status quo . . . keeps American consumers from access to an array of products and service options") (statement of Sen. Pressler); 141 Cong. Rec. S7951 (daily ed. June 8, 1995) ("The underlying agenda of this legislation is to promote competition in all areas of telecommunications") (statement of Sen. Kerrey); 141 Cong. Rec. S687 (daily ed. Feb. 1, 1996) ("This bill is intended (Cont'd on next page)

2. Granting BellSouth's Application Will Stimulate  
InterLATA Service Competition in South Carolina

The FCC's own findings confirm that BellSouth's provision of interLATA service would increase interLATA service competition in South Carolina assuming that BellSouth's exchange market is open to competition as defined in Section 271(d)(3)(A) and assuming further that the company provides interLATA service through the affiliate described in Section 271 (d)(3)(B). For example, the Commission has found that Bell entry into the in-region interLATA service market under these circumstances "has the potential to increase price competition and lead to innovative new services and marketing efficiencies."<sup>10/</sup> Speaking even

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to promote competition in every sector . . . including . . . long distance") (statement of Sen. Hollings); 141 Cong. Rec. S8165 (daily ed. June 12, 1995) ("[t]he goal of the bill . . . is to create added competition in both . . . long distance and the local exchange") (statement of Sen. Gorton); 141 Cong. Rec. H8459 (daily ed. Aug. 4, 1995) ("The bill . . . will promote competition in all telecommunications markets. . . . The long distance . . . market[] will be made more competitive as the seven Bell . . . companies are free to enter") (statement of Rep. Boucher); id. at H8501 ("The bill would phaseout controls that inhibit competition in the long-distance industr[y]") (statement of Rep. Kleczka). See also Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, CC. Dkt. No. 96-98 at ¶361 (FCC 96-325, rel. Aug. 8, 1996) (Congress intended the 1996 Act to promote competition . . . for toll service").

<sup>10/</sup> Regulatory Treatment of LEC Provision of Interexch. Services Originating in the LEC's Local Exch. Area, Second Report and Order at ¶92 (CC Dkt. No. 96-149, rel. Ap. 18, 1997).

more succinctly, the agency has held that Bell provision of in-region interLATA service "should intensify competition in . . . [that] market."<sup>11/</sup> The Commission has noted that additional competition would be particularly beneficial to residential customers since the market for residential interLATA service presently may be subject to "tacit price coordination" rather than substantial competition.<sup>12/</sup> In fact, the Commission concluded more than 15 years ago that prohibiting Bell companies from providing interLATA service is against the public interest

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<sup>11/</sup> Policy and Rules Concerning the Interstate, Interexchange Marketplace, Notice of Prop. Rulemaking, 11 FCC Rcd. 7141, 7143 (1996).

<sup>12/</sup> Policy and Rules Concerning the Interstate, Interexchange Marketplace, Second Report and Order at ¶123-25 (FCC 96-424, rel. Oct. 31, 1996) (holding that it is unclear whether the residential interLATA service market is competitive or oligopolistic); Policy and Rules Concerning the Interstate, Interexchange Marketplace, Notice of Prop. Rulemaking, supra, 11 FCC Rcd. at 7183 (holding that Bell company provision of interLATA service should eliminate any oligopolistic characteristics that exist in the interLATA services market today). See also 141 Cong. Rec. S7906 (daily ed. June 7, 1995) ("Currently . . . oligopolies or, at best, limited competition exist[s] in . . . long distance") (statement of Sen. Lott); 141 Cong. Rec. 8165 (daily ed. June 12, 1995) ("there is no question but that entry of a . . . Bell company into the long distance business will be competitive in nature") (statement of Sen. Gorton); 141 Cong. Rec. H8463 (daily ed. Aug. 4, 1995) (Today, "there is no competition in the long distance market") (statement of Rep. Dingell). Two consumer groups, the United Homeowners Ass'n and the United Seniors Health Cooperative, have asked the FCC to hold that AT&T has market power in the interLATA service market, and the Commission has opened an investigation to consider that request. See FCC, Pub. Notice DA 97-123 (rel. Jan. 16, 1997).

even if the Bell company's exchange market is not open to competition because it "deprives the public of the benefits that might flow from actual or potential entry by the excluded firm."<sup>13/</sup> Given these important findings, the Commission cannot now rationally conclude that BellSouth's provision of interLATA service in South Carolina would fail to increase competition in that product market.

The Justice Department also has found that competition in interLATA service should increase when a Bell company begins providing that interLATA service in areas where it already provides exchange service:

"InterLATA markets remain highly concentrated and imperfectly competitive, and it is reasonable to conclude that additional entry, particularly by firms with the competitive assets of the BOCs, is likely to provide additional competitive benefits."<sup>14/</sup>

The South Carolina Public Service Commission also has found that BellSouth's provision of interLATA service in that state will have a procompetitive effect in the South Carolina interLATA service market. It did so by concluding that the price of

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<sup>13/</sup> Brief of the Fed. Commun. Comm. As Amicus Curiae on Stipulation and Modif. Of Final Judgment at 30, U.S. v. West, Elec. Co., No. 82-0192 (D.D.C. Ap. 22, 1982).

<sup>14/</sup> Evaluation of the U.S. Dep't of Justice in Response to Applic. of SBC Commun. to Provide In-Region, InterLATA services in Oklahoma at 3-4 (CC Dkt. No. 97-121, May 16, 1995).

interLATA service in South Carolina could decline by 25 percent within five years after BellSouth initiates interLATA service in the state.<sup>15/</sup> The South Carolina Commission also apparently intends to enforce a voluntary commitment by BellSouth to initiate interLATA service in South Carolina at basic rates which are at least five percent below AT&T's basic rates.<sup>16/</sup>

The response of incumbent interLATA carriers to competition from non-Bell-affiliated LECs confirms that interLATA service competition increases when a LEC offers interLATA service to its exchange service customers. For example, an interLATA service price war began when SNET, a non-Bell-affiliated LEC offering exchange service to more than three million people in Connecticut, began marketing interLATA service to its exchange customers.<sup>17/</sup> As a result, while AT&T's least expensive rate plan for residential customers in most states is a time-of-day insensitive 15 cents per minute, AT&T aggressively markets a much more

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<sup>15/</sup> Entry of BellSouth Telecommun., Inc. into InterLATA Toll Market, Order Addressing Statement and Compliance with Sec. 271 of the Telecommun. Act of 1996 at 61 (S. Car. PSC Order No. 97-640, July 31, 1997).

<sup>16/</sup> Id. The PSC also has found that BellSouth's participation in the state's interLATA service market could lead to nearly 13,000 new jobs and add another \$1.2 billion to the state's gross state product within five years. Id. at 6.

<sup>17/</sup> All interLATA calls originating in Connecticut are interstate calls since Connecticut is a one-LATA state.

affordable 24 hour a day 10 cents per minute rate to residences in Connecticut.<sup>18/</sup>

AT&T has admitted that SNET's entry into the interLATA service market is directly responsible for Connecticut's lower priced interstate toll service:

"SNET has continued its massive and extremely successful marketing campaign to customers in its home state. A recently published report states that SNET now has captured 25% of the customers for long distance in its operating area. . . . SNET's in-region marketing focuses on several key attributes which cannot be duplicated by its national competitors, including the fact that SNET is the only entity which can practically offer a complete package of local, intraLATA toll, interLATA and cellular services, all of which can be provided on a single bill. . . . SNET also seeks in its advertising to position itself as the 'hometown' local carrier with the closest ties to customers in its area. . . . AT&T has attempted to compete with SNET by launching its own marketing campaign to win back cus-

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<sup>18/</sup> In an effort to avoid liability for violating the statutory geographic toll rate averaging requirement, 47 U.S.C. § 254(g), AT&T apparently provides the 10 cents per minute rate to people in states other than Connecticut only when a person finds out about the 10 cent rate plan on his or her own and then calls AT&T to request the lower rate. Marketing materials showing that AT&T actively markets the 10 cents per minute rate in Connecticut are attached as Att. No. 2. News articles indicating that this rate plan is not actively marketed in the vast majority of other states are attached as Att. No. 3. Terms of the 10 cents per minute rate plan are set forth in AT&T's Tariff FCC No. 27, §21.1.1.A.130.



tomers who had changed to SNET and to retain existing customers.<sup>19/</sup>

Residential customers may experience the benefits of competition most quickly once BellSouth enters the interLATA market in South Carolina given WorldCom Vice Chairman John Sidgmore's public statement that MCI will focus its long distance marketing on businesses rather than residences if MCI accepts WorldCom's offer to acquire MCI. Indeed, Sidgmore stated that MCI might even discontinue providing service to its 20 million residential customers once WorldCom takes control.<sup>20/</sup> MCI's declining focus on serving residential interLATA service customers plainly will make an already lethargically competitive interLATA service market even less competitive.

BellSouth's participation in the interLATA service market in South Carolina will promote competition in less obvious ways too. First, it will stimulate competition by allowing large incumbent interLATA service providers to offer exchange and interLATA services on a bundled basis. By its terms, Section

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<sup>19/</sup> AT&T Corporation's Pet. for Recon. at 2-4 (CC Dkt. No. 96-61, Sept. 16, 1996). See also Applic. of SBC Communications Inc., FCC 97-228 (rel. June 26, 1997) (sep. statement of Chairman R. Hundt at n.4) (citing more recent reports that SNET's interLATA service market share now may be 35 percent).

<sup>20/</sup> See "WorldCom Would Shift MCI's Focus", Wash. Post at A1 (Oct. 3, 1997).

271(e) of the Communications Act prohibits consumers within a Bell company's exchange area from obtaining from any of the three largest interLATA carriers (AT&T, MCI, and Sprint) a bundled package containing both exchange and interLATA service until after the Bell company providing exchange service in that area is authorized to provide interLATA service there.<sup>21/</sup> The Commission has held repeatedly that competition is harmed when telecommunications service providers are barred from providing products on a bundled basis.<sup>22/</sup> The Commission's holding is

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<sup>21/</sup> While Section 271(e) technically prohibits the three large interLATA service providers from marketing exchange and interLATA service on a bundled basis only if they provide exchange service as a reseller under Section 251(c)(4) of the Act, all three interLATA carriers apparently intend for the foreseeable future to provide exchange service in South Carolina in that manner. See BellSouth Applic. at 8-15.

<sup>22/</sup> See, e.g., NYNEX/Bell Atlantic Merger Order, at ¶114 FCC 97-286 (rel. Aug. 14, 1997) (NYNEX/Bell Atlantic merger will have the unfortunate effect of reducing competition in the New York City area in the market for bundled exchange and interexchange service); Craig O. McCaw, 9 FCC Rcd. 5836, 5880 (1994) (the bundling of interLATA and cellular services "may have clear advantages for the public . . . [by providing the ability for consumers to obtain] postalized rates and a single billed rate per call . . . [and the] ability to minimize their telephone charges"); Bundling of Cellular Customer Premises Equipment and Cellular Service, 7 FCC Rcd. 4028, 4030-31 (1992) (giving . . . cellular service providers a right to bundle cellular service with CPE benefits consumers by permitting them to obtain both CPE and service more cheaply). Congress has made clear that it too believes consumers benefit from the bundling of exchange and interLATA service. See, e.g., Cong. Rec. S7903 (daily ed. June 7, 1995) (bundling "will also bring something else that small businesses want -- this is called convenience") (statement of Sen. Burns); Cong. Rec. S7958 (daily ed. June 8, 1995) (the  
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supported by substantial research as Professor Robert McCormick explained in a affidavit prepared for use in another proceeding.<sup>23/</sup>

BellSouth's participation in the South Carolina interLATA service market should be of special benefit in another important way to high volume service customers like those who participate in the coalition that makes this filing. While scores of companies already provide interLATA service, only a very few have the expertise necessary to provide the highly specialized facilities and services often needed by customers with high volume needs. Because of its wide breadth of expertise in designing and operating specialized networks, BellSouth will add significantly to competition in the market that consists of serving large interLATA service customers.<sup>24/</sup>

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availability of services and products on a bundled basis will reduce price and increase quality) (statement of Sen. Kerry).

<sup>23/</sup> See Affid. of Robt. McCormick at ¶¶66-76 filed as Appendix, Vol. II, Tab 26, to "Motion of Bell Atlantic Corp., BellSouth Corp., NYNEX Corp. and Southwestern Bell Corp. to Vacate the Decree" in U.S. v. West. Elec. Co., No. 82-0192 (D.D.C., July 6, 1994).

<sup>24/</sup> Granting BellSouth's application also will facilitate competition in the intraLATA toll market by guaranteeing that the company provides 1+ dialing capability for customers of its intraLATA toll competitors earlier than otherwise might occur. Section 271(e)(2)(A) of the Act requires a Bell company to provide 1+ dialing capability for the intraLATA toll customers (Cont'd on next page)

**B. The Second Congressional Objective -- Promoting Competition in Telecommunications Manufacturing -- Likewise Will be Furthered by Granting the Subject Application**

**1. Congress Intended that the FCC Determine, In Making a Public Interest Determination, Whether Grant of a Bell Company's InterLATA Service Application Will Stimulate Competition In Telecommunications Manufacturing**

While recognizing that Congress intended the Commission, in determining whether a grant is in the public interest, to determine whether it will further interLATA service competition, the Commission has not yet acknowledged that Congress intended the agency also to consider whether the grant will stimulate manufacturing competition. In fact, just as the FCC's Section 271(d)(3)(C)'s authority to define the public interest requires the agency to decide whether a grant will stimulate competition in the provision of interLATA service, it also requires the agency to decide whether a grant will increase competition in telecommunications manufacturing. For example, nine members of the House Commerce Committee explained that facilitating competition in the manufacturing of telecommunications equipment was

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of all carriers serving a state no later than the date on which the Bell company initiates interLATA service in that state. If BellSouth's application is denied, the South Carolina public service commission may lawfully permit BellSouth to delay providing this 1+ dialing capability.

a key objective of the House bill.<sup>25/</sup> Senator Lott made the same point in debating the Senate bill on the Senate floor:

"This bill provides a framework under which [i]ndustries will benefit from expanding markets and opportunities, and consumers will benefit from lower prices in . . . manufacturing. . . ."<sup>26/</sup>

So did Senator Hollings in urging passage of the Conference Committee report:

"This bill is intended to promote competition in every sector of the communications industry, including . . . manufacturing. . . ."<sup>27/</sup>

Congress not only instructed the FCC to find that the public interest supports Bell entry into the interLATA service market if it will increase competition in telecommunications manufacturing, several Congressional leaders made plain that they believe Bell provision of interLATA service will have exactly that effect. For example, Senator Hollings stated that

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<sup>25/</sup> H.R. Rep. No. 204, supra, t 202 (Additional Views).

<sup>26/</sup> 141 Cong. Rec. S7906 (daily ed. June 7, 1995).

<sup>27/</sup> 141 Cong. Rec. S687 (daily ed. Feb. 1, 1996). See also id. at S704 ("this bill will help open markets by eliminating the barriers to . . . equipment manufacturing competition") (statement of Sen. Ford); 141 Cong. Rec. S8361 (daily ed. June 14, 1995) (purpose of provision allowing Bell company to manufacture once it receives authority to provide in-region interLATA service is "to maintain the current competitiveness in the manufacturing sector and to build on this competition") (statement of Sen. Warner).

Bell company participation in manufacturing will "foster[] competition [in manufacturing] . . . and creat[e] jobs along the way."<sup>28/</sup> Senator Lott made the same point in urging Senate adoption of the Conference Committee report:

"There is going to be a tremendous explosion in technology. . . . [W]e are going to have manufacturing of telephone equipment . . . more of it . . . now [that] our [Bell] companies . . . will be able to get in there, get into manufacturing. . . ."<sup>29/</sup>

Representative Boucher agreed during floor debate on the House bill:

"The . . . telecommunications equipment market[] will be made more competitive as the seven Bell operating companies are free to enter . . . [that] market[]."<sup>30/</sup>

## **2. Granting BellSouth's Application Will Stimulate Manufacturing Competition**

Congressional leaders who expressed the view that Bell provision of interLATA service will stimulate competition in telecommunications manufacturing were correct. Even if BellSouth initially provides most interLATA services by reselling the

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<sup>28/</sup> S. Rep. No. 23, supra, at 67 (Additional Views of Sen. Hollings).

<sup>29/</sup> 141 Cong. Rec. S699 (daily ed. Feb.1, 1996). See also id. at S715 (1996 Act will "increase competition in . . . telecommunications manufacturing") (statement of Sen. Moynihan).

<sup>30/</sup> 141 Cong. Rec. H8459 (daily ed. Aug. 4, 1995).

services of incumbent facilities-based interLATA carriers rather than by deploying network infrastructure of its own, demand for telecommunications products still will increase to some extent. In the first place, incumbent interLATA carriers may need to increase their network capacity in order to meet the higher aggregate demand for interLATA service that will result from the lower interLATA service prices that BellSouth's market entry will produce.<sup>31/</sup> Incumbents also may modernize their infrastructure more rapidly because of the competitive pressure that BellSouth's market entry will produce.

Moreover, it is inevitable that BellSouth will begin deploying infrastructure of its own for providing interLATA service soon after entering the market, thereby further increasing demand for telecommunications products. This will occur because the same competitive pressures that force incumbent interLATA carriers to modernize their network infrastructure will force BellSouth quickly to become less reliant on the infrastructure of its interLATA service competitors.

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<sup>31/</sup> Even if unused fiber transmission capacity in the existing networks of incumbent interLATA carriers is sufficient to accommodate the additional demand for fiber that would result from the initial industry-wide interLATA service price reductions following Bell entry into the interLATA market, other network components in existing networks may be insufficient to accommodate increased demand since there is far less excess capacity in these other components.

Even at the outset, moreover it is likely that BellSouth will deploy infrastructure to meet the needs of some high volume interLATA service customers with specialized requirements due to the Bell companies' particular expertise in designing telecommunications networks. This too will stimulate demand for telecommunications products.

Permitting BellSouth to provide interLATA service also will stimulate competition in telecommunications manufacturing by allowing incumbent manufacturers to have more normal business relationships with an important customer. By barring a Bell company from engaging in manufacturing activities until after its application to provide interLATA service is granted, Section 273 of the Act restricts the ability of incumbent manufacturers to have normal business relationships with a Bell company customer. For example, since courts have held that a Bell company is engaged in manufacturing even when the Bell company owns less than a controlling equity interest in a manufacturing company, Section 273 prevents the manufacturer from obtaining equity financing from the Bell company until after the Bell company is authorized to provide in-region interLATA service.<sup>32/</sup> Section 273 likewise may prevent a manufacturing company from obtaining

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<sup>32/</sup> U.S. v. West, Elec., 12 F.3d 225 (D.C. Cir. 1993) (a Bell company engages in manufacturing if it "share[s] directly" in the revenues of that manufacturing company).



debt financing from a Bell customer prior to approval of the Bell company's interLATA service application since opponents of Bell involvement in manufacturing have argued that a Bell company is engaged in manufacturing if it provides a manufacturer with debt financing.<sup>33/</sup>

Precluding telecommunications manufacturing companies from entering a host of productive business relationships with their

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<sup>33/</sup> While Section 273 bars many normal manufacturer/Bell customer relationships until after the Bell company's interLATA service application is approved, it exempts from the definition of manufacturing two desirable business relationships that otherwise would be off limits. Specifically, Section 273(b)(1) states that a Bell company may engage in "close collaboration" with a manufacturing company in designing and developing new products before the Bell company's interLATA service application is approved. Section 273(b)(2) likewise provides that a Bell company may give a manufacturer R&D funding in return for a royalty on the sale of products developed with that funding notwithstanding the prohibition on Bell involvement in manufacturing. Unfortunately, however, the Commission has indicated that it may define the terms "close collaboration" and "royalty" in such a restrictive manner that a manufacturer would have no ability to engage in meaningful collaboration or R&D funding arrangements with its Bell company customers. See Implem. of Sec. 273 of the Commun. Act of 1934, Notice of Prop. Rulemaking at ¶¶12, 27 (FCC 96-472, rel. Dec. 11, 1996) (implying that FCC may permit collaboration only if the collaborating Bell company does not have any direct or indirect involvement in any product development activity and that agency may bar Bell companies from funding a manufacturer's R&D in return for a royalty which is based on the marketplace success of products developed with that R&D funding).